United Nations A/59/506

General Assembly

Distr.: General
8 November 2004

Original: English

Fifty-ninth session
Agenda item 140

Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts

Report of the Sixth Committee

Rapporteur: Ms. Anna **Sotaniemi** (Finland)

I. Introduction

1. The item entitled "Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts" was included in the provisional agenda of the fifty-ninth session of the General Assembly in accordance with Assembly resolution 57/14 of 19 November 2002.

2. At its 2nd plenary meeting, on 17 September 2004, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 16th and 23rd meetings, on 29 October and 8 November 2004. The statements made by representatives during the Committee's consideration of the item are reflected in the relevant summary records (A/C.6/59/SR.16 and A/C.6/59/SR.23).

4. For its consideration of the item, the Committee had before it the report of the Secretary-General on the status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts.[1]

II. Consideration of draft resolution A/C.6/59/L.13

5. At the 16th meeting, on 29 October 2004, the representative of Sweden, on behalf of Argentina, Australia, Austria, Belarus, Belgium, Belize, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cambodia, Canada, Chile, China, the

[1] A/59/321 and Add.1.

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Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, the Czech Republic, Denmark, the Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, Fiji, Finland, France, Gabon, the Gambia, Germany, Greece, Guatemala, Hungary, Iceland, Ireland, Italy, Jamaica, Jordan, Kenya, Latvia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malta, Mexico, Monaco, Mongolia, Mozambique, Namibia, the Netherlands, New Zealand, Norway, Palau, Panama, Peru, Poland, Portugal, the Republic of Korea, the Republic of Moldova, Romania, the Russian Federation, Saint Vincent and the Grenadines, Senegal, Serbia and Montenegro, Sierra Leone, Slovakia, Slovenia, South Africa, Spain, the Sudan, Suriname, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Uganda, Ukraine, the United Kingdom of Great Britain and Northern Ireland, Uruguay and Zambia, subsequently joined by Nigeria and the United Republic of Tanzania, introduced a draft resolution entitled "Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts" (A/C.6/59/L.13).

6. At its 23rd meeting, on 8 November 2004, the Committee adopted draft resolution A/C.6/59/L.13, as orally revised, without a vote (see para. 7).

III. Recommendation of the Sixth Committee

7. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts

The General Assembly,

Recalling its resolutions 32/44 of 8 December 1977, 34/51 of 23 November 1979, 37/116 of 16 December 1982, 39/77 of 13 December 1984, 41/72 of 3 December 1986, 43/161 of 9 December 1988, 45/38 of 28 November 1990, 47/30 of 25 November 1992, 49/48 of 9 December 1994, 51/155 of 16 December 1996, 53/96 of 8 December 1998, 55/148 of 12 December 2000 and 57/14 of 19 November 2002,

Having considered the report of the Secretary-General,[1]

Thanking Member States and the International Committee of the Red Cross for their contribution to the report of the Secretary-General,

Convinced of the continuing value of established humanitarian rules relating to armed conflicts and the need to respect and ensure respect for those rules in all circumstances within the scope of the relevant international instruments, pending the earliest possible termination of such conflicts,

Stressing the possibility of making use of the International Fact-Finding Commission in relation to an armed conflict, pursuant to article 90 of Protocol I[2] to the Geneva Conventions of 1949,[3]

Stressing also the possibility for the International Fact-Finding Commission to facilitate, through its good offices, the restoration of an attitude of respect for the Geneva Conventions and Protocol I,

Stressing further the need to consolidate the existing body of international humanitarian law through its universal acceptance and the need for wide dissemination and full implementation of such law at the national level, and expressing concern about all violations of the Geneva Conventions and the two Additional Protocols,[4]

Noting with satisfaction the increasing number of national commissions and other bodies involved in advising authorities at the national level on the implementation, dissemination and development of international humanitarian law,

Noting with appreciation the meetings of representatives of those bodies organized by the International Committee of the Red Cross to facilitate the sharing of concrete experience and the exchange of views on their roles and on the challenges they face,

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[1] A/59/321.

[2] United Nations, *Treaty Series*, vol. 1125, No. 17512.

[3] Ibid., vol. 75, Nos. 970-973.

[4] Ibid., vol. 1125, Nos. 17512 and 17513.

Mindful of the role of the International Committee of the Red Cross in offering protection to the victims of armed conflicts,

Noting with appreciation the continuing efforts of the International Committee of the Red Cross to promote and disseminate knowledge of international humanitarian law, in particular the Geneva Conventions and the two Additional Protocols,

Recalling that the Twenty-eighth International Conference of the Red Cross and Red Crescent stressed the need to reinforce the implementation of and respect for international humanitarian law,

Noting the fiftieth anniversary of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, adopted at The Hague in 1954,[5] which was observed in May 2004, as well as the commemorative events organized in particular by or in cooperation with the United Nations Educational, Scientific and Cultural Organization and the International Committee of the Red Cross, and recalling the important achievement of enhancing the protection of cultural property in the event of armed conflicts,

Recalling the entry into force, on 9 March 2004, of the second Protocol[6] to the 1954 Hague Convention, and appreciating the ratifications received so far,

Acknowledging the fact that the Rome Statute of the International Criminal Court,[7] which entered into force on 1 July 2002, includes the most serious crimes of international concern under international humanitarian law, and that the Statute, while recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for such crimes, shows the determination of the international community to put an end to impunity for the perpetrators of such crimes and thus to contribute to their prevention,

Acknowledging also the usefulness of discussing in the General Assembly the status of instruments of international humanitarian law relevant to the protection of victims of armed conflicts,

1. *Appreciates* the virtually universal acceptance of the Geneva Conventions of 1949,[3] and notes the trend towards a similarly wide acceptance of the two Additional Protocols of 1977;[4]

2. *Calls upon* all States parties to the Geneva Conventions that have not yet done so to consider becoming parties to the Additional Protocols at the earliest possible date;

3. *Calls upon* all States that are already parties to Protocol I,[2] or those States not parties, on becoming parties to Protocol I, to make the declaration provided for under article 90 of that Protocol;

4. *Calls upon* all States that have not yet done so to consider becoming parties to the Convention for the Protection of Cultural Property in the Event of Armed Conflict[5] and the two Protocols thereto, and to other relevant treaties on

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[5] Ibid., vol. 249, No. 3511.

[6] *International Legal Materials*, vol. XXXVIII, p. 769.

[7] *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998*, vol. I: *Final documents* (United Nations publication, Sales No. E.02.I.5), sect. A.

international humanitarian law relating to the protection of victims of armed conflict;

5. *Calls upon* all States parties to the Protocols Additional to the Geneva Conventions to ensure their wide dissemination and full implementation;

6. *Notes with appreciation* the Declaration and Agenda for Humanitarian Action adopted by the Twenty-eighth International Conference of the Red Cross and Red Crescent, which noted that all States must take national measures to implement international humanitarian law, including training of the armed forces and making this law known among the general public, as well as the adoption of legislation to punish war crimes in accordance with their international obligations;

7. *Affirms* the necessity of making the implementation of international humanitarian law more effective;

8. *Welcomes* the advisory service activities of the International Committee of the Red Cross in supporting efforts made by Member States to take legislative and administrative action to implement international humanitarian law and in promoting the exchange of information on those efforts between Governments;

9. *Also welcomes* the increasing number of national commissions or committees for the implementation of international humanitarian law and for promoting the incorporation of treaties on international humanitarian law into national law and disseminating the rules of international humanitarian law;

10. *Calls upon* States to consider becoming parties to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;[8]

11. *Requests* the Secretary-General to submit to the General Assembly at its sixty-first session a report on the status of the Additional Protocols relating to the protection of victims of armed conflicts, as well as on measures taken to strengthen the existing body of international humanitarian law, inter alia, with respect to its dissemination and full implementation at the national level, based on information received from Member States and the International Committee of the Red Cross;

12. *Decides* to include in the provisional agenda of its sixty-first session the item entitled "Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts".

[8] Resolution 54/263, annex I.

United Nations A/59/507

General Assembly

Distr.: General
29 October 2004

Original: English

Fifty-ninth session
Agenda item 141

Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

Report of the Sixth Committee

Rapporteur: Ms. Anna **Sotaniemi** (Finland)

I. Introduction

1. The item entitled "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives" was included in the provisional agenda of the fifty-ninth session of the General Assembly pursuant to Assembly resolution 57/15 of 19 November 2002.

2. At its 2nd plenary meeting, on 17 September 2004, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 5th, 14th and 16th meetings, on 13, 26 and 29 October 2004. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records (A/C.6/59/SR.5, 14 and 16).

4. For its consideration of the item, the Committee had before it the report of the Secretary-General (A/59/125 and Add.1).

II. Consideration of draft resolution A/C.6/59/L.14

5. At the 14th meeting, on 26 October, the representative of Finland on behalf of Argentina, Australia, Austria, Azerbaijan, Belgium, Bulgaria, Burkina Faso, Cambodia, Canada, Chile, Côte d'Ivoire, Croatia, Cuba, Cyprus, the Czech Republic, Denmark, the Dominican Republic, Ecuador, Estonia, Fiji, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Jordan, Latvia, Liechtenstein, Luxembourg, Madagascar, Mali, Malta, the Marshall Islands, the

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Netherlands, New Zealand, Nigeria, Norway, Peru, Poland, Portugal, the Republic of Moldova, Romania, the Russian Federation, Serbia and Montenegro, Sierra Leone, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Turkey, Uganda, Ukraine, the United Kingdom of Great Britain and Northern Ireland and Uruguay, subsequently joined by El Salvador, introduced a draft resolution entitled "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives" (A/C.6/59/L.14).

6. At its 16th meeting, on 29 October, the Committee adopted draft resolution A/C.6/59/L.14 without a vote (see para. 7).

III. Recommendation of the Sixth Committee

7. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

The General Assembly,

Having considered the report of the Secretary-General,[1]

Conscious of the need to develop and strengthen friendly relations and cooperation among States,

Convinced that respect for the principles and rules of international law governing diplomatic and consular relations is a basic prerequisite for the normal conduct of relations among States and for the fulfilment of the purposes and principles of the Charter of the United Nations,

Alarmed by the recent acts of violence against diplomatic and consular representatives, as well as against representatives of international intergovernmental organizations and officials of such organizations, which have endangered or taken innocent lives and seriously impeded the normal work of such representatives and officials,

Expressing sympathy for the victims of such illegal acts,

Concerned at the failure to respect the inviolability of diplomatic and consular missions and representatives,

Recalling that, without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State,

Recalling also that diplomatic and consular premises must not be used in any manner incompatible with the functions of diplomatic and consular missions,

Emphasizing the duty of States to take all appropriate measures as required by international law, including measures of a preventive nature, and to bring offenders to justice,

Welcoming measures already taken by States to this end in conformity with their international obligations,

Convinced that the role of the United Nations, which includes the reporting procedures established pursuant to General Assembly resolution 35/168 of 15 December 1980 and further elaborated in subsequent Assembly resolutions, is important in promoting efforts to enhance the protection, security and safety of diplomatic and consular missions and representatives,

1. *Takes note* of the report of the Secretary-General;[1]

[1] A/59/125 and Add.1.

2. *Strongly condemns* acts of violence against diplomatic and consular missions and representatives, as well as against missions and representatives of international intergovernmental organizations and officials of such organizations, and emphasizes that such acts can never be justified;

3. *Urges* States to strictly observe, implement and enforce the principles and rules of international law governing diplomatic and consular relations and, in particular, to ensure, in conformity with their international obligations, the protection, security and safety of the missions, representatives and officials mentioned in paragraph 2 above officially present in territories under their jurisdiction, including practical measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts against the security and safety of such missions, representatives and officials;

4. *Also urges* States to take all necessary measures at the national and international levels to prevent any acts of violence against the missions, representatives and officials mentioned in paragraph 2 above, and to ensure, with the participation of the United Nations where appropriate, that such acts are fully investigated with a view to bringing offenders to justice;

5. *Recommends* that States cooperate closely through, inter alia, contacts between the diplomatic and consular missions and the receiving State with regard to practical measures designed to enhance the protection, security and safety of diplomatic and consular missions and representatives and with regard to the exchange of information on the circumstances of all serious violations thereof;

6. *Urges* States to take all appropriate measures, in accordance with international law, at the national and international levels, to prevent any abuse of diplomatic or consular privileges and immunities, in particular serious abuses, including those involving acts of violence;

7. *Recommends* that States cooperate closely with the State in whose territory abuses of diplomatic and consular privileges and immunities may have occurred, including by exchanging information and providing assistance to its juridical authorities in order to bring offenders to justice;

8. *Calls upon* States that have not yet done so to consider becoming parties to the instruments relevant to the protection, security and safety of diplomatic and consular missions and representatives;

9. *Calls upon* States, in cases where a dispute arises in connection with a violation of their international obligations concerning the protection of the missions or the security of the representatives and officials mentioned in paragraph 2 above, to make use of the means available for peaceful settlement of disputes, including the good offices of the Secretary-General, and requests the Secretary-General, when he deems it appropriate, to offer his good offices to the States directly concerned;

10. *Requests*:

(a) All States to report to the Secretary-General as promptly as possible serious violations of the protection, security and safety of diplomatic and consular missions and representatives as well as missions and representatives with diplomatic status to international intergovernmental organizations;

(b) The State in which the violation took place — and, to the extent possible, the State where the alleged offender is present — to report to the Secretary-General as promptly as possible on measures taken to bring the offender to justice and eventually to communicate, in accordance with its laws, the final outcome of the proceedings against the offender, and to report on measures adopted with a view to preventing a repetition of such violations;

(c) The States so reporting to consider using or taking into account the guidelines prepared by the Secretary-General;[2]

11. *Requests* the Secretary-General:

(a) To send, without delay, a circular note to all States reminding them of the request contained in paragraph 10 above;

(b) To circulate to all States, upon receipt, the reports received by him pursuant to paragraph 10 above, unless the reporting State requests otherwise;

(c) To draw the attention, when appropriate, of the States directly concerned to the reporting procedures provided for in paragraph 10 above, when a serious violation has been reported pursuant to paragraph 10 (a) above;

(d) To address reminders to States where such violations have occurred if reports pursuant to paragraph 10 (a) above or follow-up reports pursuant to paragraph 10 (b) above have not been made within a reasonable period of time;

12. *Also requests* the Secretary-General to invite States, in the circular note referred to in paragraph 11 (a) above, to inform him of their views with respect to any measures needed or already taken to enhance the protection, security and safety of diplomatic and consular missions and representatives as well as missions and representatives with diplomatic status to international intergovernmental organizations;

13. *Further requests* the Secretary-General to submit to the General Assembly at its sixty-first session a report containing:

(a) Information on the state of ratification of, and accessions to, the instruments referred to in paragraph 8 above;

(b) A summary of the reports received and views expressed pursuant to paragraphs 10 and 12 above;

14. *Invites* the Secretary-General to include in his report to the General Assembly any views he may wish to express on the matters referred to in paragraph 13 above;

15. *Decides* to include in the provisional agenda of its sixty-first session the item entitled "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives".

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[2] A/42/485, annex.